No. 12,870

IN THE

United States Court of Appeals

For the Ninth Circuit

SIDNEY L. WATERS,	*Appellant,*
vs.	
UNITED STATES OF AMERICA,	*Appellee.*

BRIEF FOR APPELLEE.

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Subject Index

Table of Authorities Cited

Cases

Statutes

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STATEMENT OF THE CASE.

This is an appeal from a final decree entered by the District Court on August 30, 1950, in favor of appellee, United States of America, and against respondent, a seaman who filed a Libel in Admiralty for maintenance under the provisions of 28 U.S.C.A. 837 (now Sec. 1916)[1] and under the Public Vessels Act, 46 U.S.C.A. 781.

The said libel alleged that libelant signed shipping articles whereby he engaged to serve as chief engineer on the American Steamship "Arthur A. Penn," a vessel owned and operated by the United States, for a voyage to the South Pacific and return, and that dur-

[1]Enables seamen to prosecute suits without prepayment of costs.

ing the course of said voyage he became ill and at the termination thereof, on or about March 11, 1945, he was compelled to leave the vessel for hospital treatment for pulmonary tuberculosis. He further alleged that he was entitled to maintenance at a rate of $7 per day from July 6, 1949 to November 26, 1949, in the total sum of $896.

Appellee answered the said libel, admitting ownership of said vessel but denying that appellant suffered disability as alleged or that it was indebted to appellant in the sum of $896, or in any other sum.

Appellant subsequently filed an amendment to said libel, alleging that on or about April 24, 1944, while employed as chief engineer on the Steamship "Benjamin Bonneville," owned and operated by the United States, he became ill and was compelled to leave the said vessel because of said illness, and that he remained ashore resting until December 13, 1944, when he signed articles on the SS "Arthur A. Penn" as previously alleged. It was further alleged that on or about November 13, 1945, appellant accepted a settlement in consideration of the payment of $1,000 and executed a release of all claims and demands, releasing appellee, the said vessels, and general agents from liability. It was also alleged that the said consideration was inadequate and that the settlement was unfair and entered into by appellant without comprehension or understanding of his rights, and that he had been mislead. It was further alleged that the settlement "was not full, fair, and adequate" and appellant asked

that "the release be declared invalid and that it be set aside."

An answer was duly filed by appellee to the said amendment to the libel, alleging that appellant "executed a full release of all claims and demands which he then had or might thereafter have against the United States of America for any illness arising aboard the vessels SS "Benjamin Bonneville" and SS "Arthur A. Penn," and that appellant "received the sum of $1,000 in consideration for signing the said release and that said consideration was adequate and fair and entered into by libelant with a full understanding of all his rights." A copy of the release was attached to the said answer.

The District Court after hearing the testimony of the witnesses, including that of two medical witnesses, found and decreed that appellant's "illness was not caused by any unseaworthiness of either of the said vessels or by any negligence" on the part of appellee. (Ap. 133.) The Court further found and decreed that the amount of $1,000 paid by appellee in settlement of appellant's claim "was adequate and fair consideration" and that "the said release is and was of binding force and effect." (Ap. 133.) It was further found and decreed by the Court that appellant was confined for treatment for pulmonary tuberculosis to the United States Marine and Public Health Service hospitals from March 13, 1945 to July 6, 1949, with the exception of certain short periods when he was an outpatient, and that otherwise

appellant was under outpatient care from July 6, 1949 to approximately May 8, 1950, on which latter date he was not in need of any further treatment for his tubercular condition. The Court further found and decreed that it was not true that appellee was liable for maintenance at the rate of $7 per day in the total sum of $896, as alleged by appellant, or for any other sum. (Ap. 133.) The Court decreed that appellant was not entitled to recover anything from appellee, and that the libel be dismissed. (Ap. 135.)

STATEMENT OF FACTS.

Inasmuch as it appears from the appellant's brief that he has not stated fully the material facts upon which the District Court's decree was based, it is deemed necessary to submit the following:

Appellant testified that other than reporting to a Public Health Service doctor following the termination of his voyage on the SS "Benjamin Bonneville" in October, 1944, he did not go to the Marine Hospital or seek other medical attention, that he was simply "feeling pretty bum." (Ap. 39.) He then shipped out again on the SS "Arthur A. Penn" on the 15th of December, 1944 (Ap. 27), and he left the "Arthur A. Penn" at the termination of the voyage on or about the 12th or 13th of March, 1945. (Ap. 28.) During the trip on the "Arthur A. Penn" there were two occasions on which appellant "had to work all night." (Ap. 29.) He remained in the Marine Hospital from

March until June, when he showed slight improvement, and then went home, but came down with a cold and returned to the Hospital again. (Ap. 30.) Appellant himself suggested that he be allowed to go to Los Angeles where he thought it would be warmer, and the doctor at the Marine Hospital gave him permission to do so. (Ap. 31.) He went to the office of John H. Black, attorney for the vessel's representatives, and talked to Mr. R. L. Frick, an attorney in Mr. Black's office, concerning a proposed settlement. He told Mr. Frick "I thought $5,000 would be a fair settlement." (Ap. 33.) Mr. Frick then took the matter up with Mr. Black, and advised him that the case could be settled for $1,000. (Ap. 33.) Appellant testified further that Mr. Frick told him that in the absence of a settlement maintenance would be paid for a reasonable length of time.

Mr. Frick testified that appellant first came into his office on October 25, 1949, for the purpose of discussing his claim, at which time appellant stated the facts of his case, which statement after being transcribed, was read and signed before a notary public by appellant as being true and correct. (Ap. 64.) (Respondent's Exhibit A—Ap. 55.) Mr. Frick testified that he questioned appellant about his employment on the vessels, and as set forth in said statement, appellant declared "I have no complaint to make about either the living conditions on either the SS 'Benjamin Bonneville' or the SS 'Arthur A. Penn.' They were both standard liberty vessels and I occupied

quarters on each of them by myself," and further that "there was never any complaint made against the vessel in any way." (Ap. 65.) As to whether this included working conditions also Mr. Frick testified as follows:

> "The Court. Q. That includes working conditions?
>
> A. Yes, your Honor, very definitely as to the working conditions." (Ap. 65.)

Following this discussion, Mr. Frick suggested that appellant get a medical abstract from the Marine Hospital. The medical abstract was obtained (Ap. 68, respondent's Exhibit "E") and given to Mr. Frick on November 1, 1949. The contents of the abstract were discussed and shown to appellant, and Mr. Frick advised him that his claim was one based on maintenance only and that since he was interested in a lump sum settlement he would discuss the matter. Appellant asked for $5,000 in settlement of the claim, and Mr. Frick, after discussing it with Mr. Black, offered $1,000. (Ap. 72.) Appellant indicated he desired to see a lawyer, and Mr. Frick informed him that if he wanted to consult a lawyer he would be glad to discuss the matter with his lawyer. Appellant returned on November 13, 1949 and Mr. Frick again explained to him that he was entitled to receive his maintenance up to the date of the discussion and to continue to receive maintenance week by week, that it was up to appellant whether he desired to take an aggregate sum in settlement of his future period of disability or to be paid on a week-to-week basis. (Ap.

73.) Mr. Frick discussed with appellant the maintenance rate, which at that time was $4 per day, and figured that there was approximately ten weeks accrued from August 31, 1949, when appellant was discharged from the hospital, until November 11, 1949, or a total of approximately $280. (Ap. 74.) Appellant agreed to settle his claim and thereupon executed the release and was paid $1,000.

Mr. Frick further testified that is is customary in the handling of these seamen's claims for some of them to seek and obtain lump sum payments rather than to go along on a week-to-week basis (Ap. 75), and that he very definitely told appellant that he could either take it by the week or obtain a lump sum payment. (Ap. 76.) He told appellant that according to the Marine Hospital report his prognosis was uncertain and that he did not know when appellant would be recovered from his illness, and that if the latter had any misgivings on the matter to wait and see and take his maintenance by the week, that otherwise he could settle on a lump sum basis. (Ap. 81, 82.)

At the time the discussions took place between appellant and Mr. Frick, the latter did not have before him any X-ray reports or X-ray findings other than the said abstract from the Marine Hospital. (Ap. 92.)

Dr. Harold G. Trimble, a recognized, duly licensed physician, specializing in chest and tubercular cases, testified that he examined appellant on May 8, 1950 and diagnosed the condition as pulmonary tuberculosis which had run the usual course, and at the time

of Dr. Trimble's examination his tests disclosed that he had no tubercule bacilli. (Ap. 97.) At the time of the doctor's examination he felt that the man was able to follow any occupation which did not require heavy physical work, but that because of his age it was inadvisable to return to sea. The doctor felt that no further medical treatment was necessary (Ap. 99), and that it was better for the man to be working. (Ap. 100.)

SUMMARY OF ARGUMENT.

Appellant's claim that the trial Court erred in finding that his illness was not caused by any unseaworthiness of appellee's vessels, or its negligence, is without merit and without any support in the record. The evidence clearly shows that there was no alleged unseaworthiness or negligence. The further claim that the release was invalid because of alleged inadequate consideration or because it was not fairly arrived at, is likewise unsupported by and of the evidence, including appellant's own testimony.

The findings of the District Court, based entirely upon oral testimony given by witnesses in open Court, is entitled to great weight and should not be disturbed. The District Court chose to believe the testimony, of Dr. Trimble, against that of Dr. Wolfman, and to consider the testimony of Mr. Frick as being truthful as against testimony given by appellant. But even in the case of testimony given by the appellant himself, there is no showing that he was in any manner overreached

or that he did not fully comprehend that he was accepting a lump sum settlement of his claim in preference to weekly payments.

ARGUMENT.

I.

THE FINDINGS OF THE TRIAL COURT ARE ENTITLED TO VERY GREAT WEIGHT AND SHOULD BE AFFIRMED.

This is an admiralty case and, therefore, the rule regarding the weight of the trial Court's findings of fact is admittedly somewhat different than in an appeal at law. The Court of Appeals has the power to try such cases *de novo*. However, this Court in the case of *Tawada v. United States,* 162 F. (2d) 615, declared as follows on this precise point:

> "(1) In an appeal in admiralty, where a substantial part of the evidence was heard in open court, the 'correct rule' is that the findings of the trial Court 'are accompanied with a rebuttable presumption of correctness'. Thomas v. Pacific S.S. Lines, Ltd., 9 Cir., 84 F. (2d) 506, 507, 508; the Pennsylvanian, 9 Cir., 149 F. (2d) 478, 481. And 'where all of the evidence is heard by the trial judge and the question is one of credibility of witnesses on conflicting testimony, the presumption (that the findings of the District Court are correct) has very great weight.' "

This Court also stated the rule in *Stetson v. United States,* 1946 A.M.C. 900, 155 Fed. (2d) 359 (C.C.A.

9th) and in *Bornhurst v. United States,* 1948 A.M.C. 53 (C.C.A. 9th), as follows:

> "The findings are supported by substantial evidence, are not clearly erroneous, and hence should not be disturbed."

See also *City of New York v. National Bulk Carriers, Inc.,* 138 Fed. (2d) 826, where the Court said:

> "It appears to be impossible to convince the bar that we will disturb findings of fact as seldom in admiralty causes, as in any other. Whether there lingers a notion—never in fact justified—that because an appeal in the admiralty is a new trial, the scope of our review is broader, we cannot know; but over and over again appeals are taken without the least chance of success except by over-setting findings of fact upon disputed evidence. In order to meet this persistence we may in the end find ourselves forced to invoke the penalty provided in Rule 28 (2) of this Court."

To the same effect are many other cases, including:

"Heranger", 101 Fed. (2d) 953 (9CCA);
City of Cleveland v. McIver, 109 Fed. (2d) 69;
Commercial Molasses Corp. v. New York Tank B. Corp., 114 Fed. (2d) 248;
The S.C.L. No. 9, 114 Fed. (2d) 964.

The facts in relation to every material issue in the matter at bar were decided by the District Court in favor of appellee and against appellant. A trial *de novo* is therefore not available to appellant.

It is not believed that this Court should or will try this case *de novo*. The rule appears to be well settled that the trial Court is in a better position to judge the credibility of witnesses and to give weight to the evidence when, as here, all the testimony is adduced from witnesses who have testified personally in Court.

II.

THE EVIDENCE FULLY SUPPORTS THE DISTRICT COURT'S FINDING THAT APPELLANT'S ILLNESS WAS NOT CAUSED BY APPELLEE'S NEGLIGENCE OR UNSEAWORTHINESS OF ITS VESSELS.

On the whole, the testimony of appellant himself fell far short of establishing unseaworthiness of the vessels or negligence of appellee. As indicated in the record, the voyages were undertaken during wartime conditions when all merchant seamen were necessarily required to put in somewhat more hours than under normal conditions, and where the personnel included some whose experience was not as great as seamen regularly plying their trade. This situation, of which the Court can take due judicial notice, by no means was shown by any evidence in the record to have amounted to unseaworthiness of either of the vessels, or negligence on the part of appellee, nor does the record show that appellant's illness was caused by any negligence or unseaworthiness.

It is contended that because appellant sailed on the "Arthur A. Penn" before it was known that an X-ray taken earlier disclosed tuberculosis, negligence is

established on the part of appellee. Such contention is immaterial to the issues properly before this Court. In any event, there is no competent evidence showing that because of such fact appellant's condition was, with reasonable certainty or probability, caused or aggravated by that voyage. The only testimony on this phase is that of Doctor Wolfman, who merely stated that such circumstances as described by appellant, but not necessarily believed by the Court, "would have a *tendency* to promote the development of tuberculosis." (Emphasis supplied.) (Ap. 47.) Doctor Wolfman was then asked the following question by appellant's counsel, and gave the following answer:

> "Q. Now assuming, as stated, about a month after the conclusion of the voyage the X-rays then revealed a moderately advanced tuberculosis, *is it possible* medically, or probable, that tuberculosis could reach that moderately advanced state under those conditions within the period described of some seven or eight months?" (Emphasis supplied.)
>
> "A. It *could* be very easily. The term described only the physical extent of the disease in the lung and does not imply the length of time it has taken to develop." (Emphasis supplied.) (Ap. 47.)

Counsel for appellant then asked the doctor whether, *assuming* that appellant "was overworked * * * that delay in treatment would be—and also the condition encountered—would be harmful or not?" and the doctor answered affirmatively. (Ap. 47, 48.)

Here, again, the District Judge was well within his province in finding from the evidence that appellant was not "overworked" to the extent claimed. This testimony, in any event, based upon speculative questions not supported by the evidence, was undoubtedly treated by the District Court as being of little or no value. It therefore appears abundantly clear that the District Court was justified in finding that there was no negligence or unseaworthiness, and that in any event any such alleged negligence or unseaworthiness was not the proximate cause of appellant's illness.

Finally, we wish to point out that it was not shown by any evidence that whoever took or reviewed the X-rays was an employee of the vessel or that any alleged negligence of such person was chargeable to the vessel. Even if the doctor who took the X-rays were an employee of one department of the Government, his alleged acts or omissions could not bind another department. See *Burke v. United States,* 67 F. Supp. 827 at 830, where the Court pointed out: "Notice to one of these officers of some fact relating to a branch with which he was not connected is not and should not be notice to the department, binding on it in future transactions." To the same effect see *Jones v. United States,* 106 Fed. (2d) 888 at 891.

In this action, which is a libel for maintenance only, appellant's discussion relating to alleged negligence or unseaworthiness is immaterial and outside the issues involved. We reiterate, however, that appellant has not established by any acceptable evidence that his

illness was caused by any unseaworthiness of either vessel or by any negligence of appellee. The lower Court's finding in this respect is fully supported by the evidence.

III.

THE RELEASE WAS FAIRLY OBTAINED, IS BASED ON ADEQUATE CONSIDERATION, AND IS THEREFORE VALID AND BINDING.

Appellant argues that inasmuch as the release for $1,000 was based upon maintenance that there was a failure of consideration because it also included a release of all claims. (Appellant's Brief, page 9.)

In the first place, there is evidence before the Court that before the release was taken appellant himself admitted to appellee's representative, Mr. Frick, that his illness was not caused by either the living quarters or the working conditions on either of the vessels here involved (Ap. 65), and as found by the lower Court, the evidence clearly indicated that appellant's illness was not caused by any unseaworthiness of either of the vessels or negligence of appellee.

At the time the settlement was entered into appellant would have been entitled to maintenance in the sum of approximately $280. His future disability was uncertain, and if he had chosen to accept settlement on a week-to-week basis he would have received it in that manner. He chose instead to obtain a $1,000 lump sum settlement. In other words, he received in

addition to what he was legally entitled at that time, $720, which, as indicated by the release, was in settlement of maintenance and all other claims, including damages. Since it is clear that there was no basis then, nor as developed by the evidence at the time of trial, for a recovery of damages, it cannot be said, even on the ground urged, that the consideration for the release was inadequate. The District Court in seeing and hearing the witnesses on this issue was satisfied that the consideration was fair and adequate, and further that appellant was not misled in any manner in executing the release. Indeed, appellant testified at the trial as follows:

> "There was no agreement reached on the thousand dollar settlement until sometime after. When he offered me that thousand dollars, I told him that I wanted to take time and study it over and possibly get some legal advice on it before I signed it, and he said, 'O.K.' He said, 'If you have got a lawyer, bring him up here,' he said, 'and we will discuss it.'" (Ap. 60.)

How there could possibly be any basis for the claim that appellant was overreached or misled, it is difficult to comprehend. As shown by Mr. Frick's testimony, he carefully and clearly explained appellant's rights to him before the release was taken:

> "Yes, I explained to him very carefully to the best of my ability that he would be entitled to maintenance for a reasonable time, if a release were not taken, that time being very uncertain, the cases being somewhat conflicting on what a

> reasonable time is; that in no event would we be obligated to pay maintenance after he had reached a maximum medical benefit or stationary condition. That would be my understanding of the law."

Appellant has cited in his brief the case of *Bonici v. Standard Oil Company,* 103 F. (2d) 437 (C.A., 2d Cir.), which he seems to regard as being in support of his position. This case involved a seaman who executed a release of all claims, in the sum of $89.40. The seaman had suffered an injury to his shoulder, and had been hospitalized for about three weeks. The release, "a general release of all claims," was taken about a week after he was released from the hospital. It developed that the seaman suffered further disability from his shoulder and was disabled for nearly four months after the release was taken. The pertinent portions of the Court's opinion are as follows:

> "As the case was ultimately presented to the court, this libel was limited to a claim for Bonici's maintenance and cure between March 16 and July 8, 1938. Originally there was also a claim for damages for injuries sustained on the ground that the accident was caused by respondent's negligence. But this was withdrawn at the trial, counsel stating that he thought the release covered all claims based on negligence. Further, the court made a specific finding that respondent was not negligent and the vessel was not shown to be unseaworthy. The issue presented was as to the binding force of the release. The court held that the libelant could not give away, or release

away, his right to maintenance and cure, and therefore made him an award at the rate of $2 per day for the period, amounting in all to $228. This appeal challenges the ruling as to the release.

"* * * Libelant is a person of some education, able to read and write, and the court held, as indeed his counsel conceded, that he knew he was signing a general release. He testified, however, that he did so because the doctor for respondent told him that there was nothing the matter with his arm and that he would be ready to work in five or ten days. * * *

"The court held the release to be ineffective as against the seaman's claim for maintenance and cure, on the authority of Calmar Steamship Corp. v. Taylor, 303 U.S. 525, 58 S.Ct. 651, 654, 82 L. Ed. 993. But we feel that this is an unwarranted interpretation of the Calmar case, which does not go so far. It does hold for the first time in the Supreme Court, what had already been ruled in the lower federal courts, that the shipowner's obligation to his seaman for maintenance and cure, or care, might outlast the voyage when the seaman had suffered illness during his service and continue for 'a fair time' 'in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care, and medical treatment.' And it held (approving The Mars, 3 Cir., 149 F. 729, 730, and Wilson v. Manhattan Canning Co., D.C.W.D. Wash., 205 F. 996, 997) that the allowance might include small amounts to cover future mainte-

nance and cure of a kind and for a period which can be definitely ascertained.

"(1) We think the rule to be applied is that which apparently prevails generally as to seamen's releases in admiralty, namely, that such releases are not wholly invalid, but are jealously scrutinized to see that these 'wards of the admiralty' have not been overreached. The tender consideration of admiralty for these 'favorites' of the court who are 'a class of persons remarkable for their rashness, thoughtlessness, and improvidence' (Story, J., in Brown v. Lull, C.C., 4 Fed. Cas. 407, 409, No. 2018) has been emphasized once again in the recent case of Socony Vacuum Oil Co. v. Smith, 305 U.S. 424, 59 S.Ct. 262, 83 L. Ed. ....., affirming 2 Cir., 96 F. 2d 98, in holding the common law doctrine of assumption of risk not a defense to a seaman's action for personal injury. See also Calmar Steamship Corp. v. Taylor, supra; Cortes v. Baltimore Insular Line, 287 U.S. 367, 377, 53 S.Ct. 173, 77 L. Ed. 368; The Osceola, 189 U.S. 158, 23 S. Ct. 483, 47 L. Ed. 760. A classic statement of the rule appears in Mr. Justice Story's opinion in Harden v. Gordon, C.C., 11 Fed. Cas. 480, No. 6047, at page 485, where he states that, while seamen are 'not technically incapable of entering into a valid contract, they are treated in the same manner, as courts of equity are accustomed to treat young heirs, dealing with their expectancies, wards with their guardians, and cestuis que trust with their trustees.' And there he held invalid a stipulation limiting the shipowner's responsibility

for medicine and medical care to that furnished by the medicine chest on board ship.

"(2), 3) Hence, while ('one who claims that a seaman has signed away his rights to what in law is due him must be prepared to take the burden of sustaining the release as fairly made with and fully comprehended by the seaman' (Harmon v. United States, 5 Cir., 59 F. 2d 372, at page 373), *nevertheless a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained. Any other result would be no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seaman more regularly into the courts of admiralty. Even if a seaman is the court's ward, the court cannot be always at hand to watch over him, for it can only move ponderously in a formal lawsuit. Fair settlements are in the interest of the men, as well as of the employers.*" (Emphasis supplied.)

"(4) *We think, therefore, that the trial court should not have held a seaman's release as always inoperative, but should have considered this release from the standpoint of the fairness of the conditions under which it was secured and of the settlement which it constituted.* In view, however, of the evidence in the record bearing upon the taking of the release and of the small award made, we feel that we should dispose of the matter without requiring a new trial. The evidence is clear, as the doctor for the respondent showed in his report, that the injury was considered much less serious at the time the release was given than it eventually turned out to be. The

> release was signed because of the advice given by the respondent's doctor. As it turned out, nearly four months' additional care was needed before the libelant could go back to work, during which time he was in dire need of ordinary maintenance. A release induced by the diagnosis given by the employer's doctor should not prevent the award of additional maintenance when the diagnosis is shown to have been erroneous, even though it may have been quite honestly made." (Emphasis supplied.)

The Court of Appeals, in affirming the lower Court, allowed maintenance for the additional period, and commented that the money he had received at the time of giving the release "was somewhat in excess of maintenance then accrued, but the court was justified in holding that the additional amount was given to secure a release covering, among other things, the claim of damages for negligence."

It is plain from the language of the *Bonici* case that *"a release fairly entered into and fairly safeguarding the rights of the seaman should be sustained,"* and that any other result would be *"no kindness to the seaman, for it would make all settlements dangerous from the employer's standpoint and thus tend to force the seamen more regularly into the courts of admiralty."* (103 Fed. (2d) 437, at 439.)

In Bonici's case, he was induced to sign a release for a small sum of money, on the basis of erroneous advice given by the shipowner's doctor. There is no

possible circumstance in the case at bar that could be compared with the situation there. As is abundantly clear from the evidence, appellant carefully considered the question of entering into a settlement, even to the extent of delaying the settlement for the purpose of consulting a lawyer. Mr. Frick, with whom he dealt, invited him to do so, and to bring his lawyer in for a discussion if he desired. Following this, appellant decided to settle his case for a substantial amount, namely, $1,000. This, as pointed out, was $720 more than the amount of maintenance accrued at the time that the release was taken. This was and is good and sufficient consideration for a release of all claims.

It would seem clear from the evidence that appellee has met the burden of sustaining the release.

CONCLUSION.

Appellant in this case was given a full and fair trial in the lower Court, where the District Judge had the opportunity to, and did, hear all of the witnesses testify. The evidence fully supports the lower Court's finding that appellant's illness was not caused by any unseaworthiness of appellee's vessels, or by the latter's negligence. In any event, the Court properly dismissed appellant's libel for maintenance in view of the validity of the release which was fairly entered into by appellant, and for which he received a good and adequate consideration. The trial Court's

findings and decree, being based (except for documentary evidence) entirely upon the oral testimony of witnesses who appeared and testified personally in Court, should be affirmed.

Dated, San Francisco, California,
April 27, 1951.

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